

STATE OF MARYLAND

v.

KRYSTOPHER LOMAX

IN THE CIRCUIT COURT

FOR WASHINGTON COUNTY

CASE NO. C-21-CR-23-000120

DEFENDANT'S REQUEST FOR DISCOVERY AND MOTION TO PRODUCE DOCUMENTS

The Defendant, by and through his/her attorney, Steve Musselman, Assistant Public Defender, requests, in accordance with Maryland Rule 4-263, that the State's Attorney provide the Defendant, within thirty (30) days or sooner, after the earlier of the appearance of counsel or the first appearance of the defendant before the Court pursuant to Rule 4-213, the following discovery material:

The discovery and inspection requested below extends to material and information where said material and information is in the State's Attorney's possession or control, or in the possession or control of members of his staff or any individual connected with the investigation of the case, including the local police department, the State Police, or any other law enforcement agency which has directly participated in the investigation of this matter.

A. All material or information in any form, whether or not admissible, that tends to exculpate the defendant or negate or mitigate the guilt or punishment of the Defendant as to any offense charged in any of the counts contained in the above-captioned case. This request is a specific demand for information which in any way indicates that the Defendant, if guilty of any offense, may only be guilty of a lesser included offense in this charging document. This request is a specific demand for information in mitigation of sentence, including the following:

- a. Whether Defendant was a marginal participant in the offense charged.
- b. Whether Defendant was under the influence of alcohol or other substances at the time of the occurrence.
- c. Whether Defendant has a prior record.

Said material and information includes the following:

- a. All documents, papers and matters of any kind or nature of an exculpatory nature, or more properly reflecting or tending to reflect or assist the Defendant in establishing reasonable doubt on any and all charges contained within the Indictment or to mitigate punishment.
- b. All information of any kind or nature reflecting the non-presence of the accused in any respect to any of the matters averred to in any of the counts contained in the above case.
- c. All evidence that may show the lack of credibility of any government witness including, specifically, any prior record for crimes of moral turpitude, any prior inconsistent statements, any plea agreement or other similar information.
- d. All evidence relating to mental impairment or history of mental illness or history of mental treatment of any government witness.
- e. All statements or witnesses whether oral or written tending to exculpate the Defendant.
- f. All documents, papers or information (of an oral nature) reflecting an agreement between the State's Attorney's office, any witness, co-defendant, co-conspirator (indicted or otherwise) or with the attorney for any witness, co-defendant, co-conspirator, (indicted or otherwise), if any, respecting any form of what might be construed or considered to be immunity, promises, inducements, assurances or recommendations to be made in their behalf in any pending investigation (State or Federal), any trial or prosecution (State or Federal), any probation or parole consideration, adjudication or hearing (park work, alternative community service, work release, furlough, educational or otherwise), (State or Federal), or any of the matters which may be considered as such by the witnesses.
- g. Any and all criminal records, arrests, convictions or evidence concerning the mental instability of any witnesses for the prosecution either in its case in chief, or as a rebuttal witness, which may be useful to the accused in the proper impeachment of the witness' credibility or in the proper demonstration of bias towards the accused or in the proper demonstration of the witness' interest in the outcome of the prosecution.
- h. Any other matter in the possession, control or knowledge of the prosecution or matter

which, in the exercise of reasonable care and diligence (irrespective of good faith) which could be in the possession, control or knowledge of the prosecution, which may exculpate the accused or assist him under the totality of the circumstances pertaining to the case in establishing reasonable doubt. Defendant specifically demands any evidence which in any way inculpatates another in the commission of this offense and/or points to the involvement of others, whether directly or indirectly, including, but not limited to, any inculpatory-exculpatory statements (of any co-defendant/co-conspirator indicted or otherwise) in this case or related offenses, any failures to identify the accused, any identification of others, or any misidentifications.

B. All written and all oral statements of the defendant and of any co-defendant that relate to the offense charged and all material and information, including documents and recordings, that relate to the acquisition of such statements; including

1. The substance of each oral statement and a copy of each written or recorded statement made by the Defendant to any person;

2. The substance of each oral statement and a copy of each written or recorded statement made by any co-defendant or alleged co-conspirator in this case to any person;

3. As to any statement in the preceding two subparagraphs, any reports which in any way show any circumstances which affect the voluntariness, reliability and credibility of the statement or the presence of threats, promises or inducements to secure the statement.

C. Prior criminal convictions, pending charges, and probationary status of the defendant and of any co-defendant;

D. The name and address of each State's witness whom the State's Attorney intends to call to prove the State's case in chief or to rebut alibi testimony, together with all written statements of the person that relate to the offense charged;

E. A copy of all statements (written or oral) of all persons who have been interviewed by any agent of the State in connection with the subject matter of this case, whether or not the State

presently intends to call said individuals at trial.

F. All evidence of other crimes, wrongs, or acts committed by the defendant that the State's Attorney intends to offer at a hearing or at trial pursuant to Rule 5-404(b);

G. All material or information in any form, whether or not admissible, that tends to impeach a State's witness, including:

1. Evidence of prior conduct to show the character of the witness for untruthfulness pursuant to Rule 5-608(b);

2. A relationship between the State's Attorney and the witness, including the nature and circumstances of any agreement, understanding, or representation that may constitute an inducement for the cooperation or testimony of the witness;

3. Prior criminal convictions, pending charges, or probationary status that may be used to impeach the witness;

4. An oral statement of the witness, not otherwise memorialized, that is materially inconsistent with another statement made by the witness or with a statement made by another witness;

5. A medical or psychiatric condition or addiction of the witness that may impair a witness's ability to testify truthfully or accurately;

6. The fact that the witness has taken but did not pass a polygraph examination;

7. The failure of the witness to identify the defendant or a co-defendant;

H. All relevant material or information regarding:

1. Any search or seizure of any kind of the Defendant or co-defendant in this case, together with a copy of all arrest warrants, search warrants, applications and affidavits in support thereof, inventories and all reports regarding any such searches and seizures whether or not the State intends to use any so seized at any hearing in the above-captioned case or at the trial of this matter.

2. Any information regarding the interception of any telephonic communications or any eavesdropping of any person whether or not an agent of the State, in connection with the case whether by the consent of the Defendant or any co-defendant or co-conspirator in the case or not, together with a copy of all Court Orders authorizing or extending the authority of any wire tapping or eavesdropping, applications and affidavits in support thereof, and all reports regarding such wire tapping or eavesdropping, whether or not the State intends to use any evidence gained directly or indirectly by such wire tapping or eavesdropping at any hearing or at the trial of this matter.

3. Any information including statements, photographs, or other physical evidence regarding any pre-trial identification or attempted pre-trial identification of the Defendant or any co-defendant by any witness and a copy of all reports regarding such identification.

I. As to each expert consulted by the State in connection with the action:

1. The expert's name and address, the subject matter of the consultation, the substance of the expert's findings and opinions, and a summary of the grounds for each opinion;

2. The opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and

3. The substance of any oral report and conclusion by the expert.

J. The opportunity to inspect, copy and photograph all documents, computer-generated evidence, recordings, photographs, or other tangible things that the State intends to use at a hearing or at trial.

K. The opportunity to inspect, copy, and photograph all items obtained from or belonging to the Defendant at a time and place initially designated by the State which is mutually convenient, whether or not the State intends to use the item at a hearing or at trial.

L. To disclose to the Defendant whether the prosecuting attorney has any relevant material

or information relating to guilt or innocence or mitigation of punishment, the source of which is a confidential informant, so that the Defendant can request relief from this Court to compel the disclosure of said informant. This is a specific demand for disclosure of whether any alleged confidential informant participated with the Defendant in any occurrence or transaction which forms the subject matter of these charges.

M. If the State's Attorney or any member of his staff or any individual connected with the investigation of this case has in its possession or control any relevant material or information which has been provided by confidential informant who was either present at the time of the alleged violation or participated with the Defendant in the violation in any manner whatsoever, then please furnish the Defendant with the identity, address, business and home telephone number of said person or persons.

N. The name, address and telephone number of any informer, through whom information was derived which culminated in a search either with or without a search warrant or whose information culminated in an arrest either with or without an arrest warrant, if said information is in the possession or control of the State's Attorney, a member of his staff, or any individual connected with the investigation of this case. Provide any criminal conviction record of said informant and all terms of any agreement made with the informant by the State's Attorney's Office and/or Police Department.

O. Any relevant material or information in the possession of the State reflecting the inability of a juror on the prospective Jury Panel in this particular case to render a fair and impartial verdict.

P. Any relevant material or information regarding ex parte communication by a member of the State's Attorney's Office concerning this case with any member of the Judiciary.

Pursuant to Maryland Rules of Procedure 4-263, the requests made herein are continuing in nature. The State's Attorney's Office, the members of its staff and any other law enforcement personnel who participated in the investigation of the above-captioned case are requested to

promptly furnish the Defendant any additional matter discovered after compliance with the request herein and if any additional matter is discovered during the trial, in addition to furnishing Defendant or his counsel any additional matter discovered after compliance with the requests herein, the State's Attorney shall notify the Court that the matter is being furnished to the Defendant.

The Defendant further reserves the right to file appropriate Motions under the provisions of Rule 4-252 until such time as the State has made full disclosure in accordance with this request and any Request for Bill of Particulars that may have been filed in this case and until the Court has had an opportunity to rule on any motions to compel or exceptions. The Defendant further reserves the right to file additional requests for particulars and/or Discovery depending upon the substance of the State's answers.

/s/Steve Musselman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 10, 2023, a copy of the foregoing was electronically filed through MDEC to the Court and to the State's Attorney's Office for Washington County.

/s/Steve Musselman

Steve Musselman
Assistant Public Defender

POINTS AND AUTHORITIES

Brady v State, 373 U.S. 83 (1963)
Jencks v U.S., 353 U.S. 647
Carr v State, 284 Md. 455 (1979)
Leonard v State, 46 Md. App. 631 (1980)
Martinez v State, 309 Md. 124 (1987)
Jones v State, 297 Md. 7 (1983)
Maryland Rules of Procedure, Rule 4-263
United States constitution
Maryland Declaration of Rights